

Complaint

IN THE MATTER OF

MEYER BRODIE AND MORRIS WHITE, DOING BUSINESS
AS M & M BAG AND SUIT CASE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2658. Complaint, Dec. 12, 1935—Decision, July 9, 1936*

Where a firm engaged in the manufacture of leather luggage, about 65 percent of which was made from the inferior split leather or cut or layer of the hide remaining after top grain or surface had been removed therefrom—Conspicuously stamped said products, thus made, "Warranted Walrus Grained Leather," and stamped or represented or designated luggage made by it from such split leather as "leather," without indicating in any way that same was not covered with top grain or genuine leather;

With tendency and capacity to confuse, mislead, and deceive members of public into believing that luggage, thus stamped by it, was covered with outside or top layer of hide, as understood by trade and consuming public from terms "top grain leather," "grained leather," "genuine leather," "genuine cowhide," "warranted leather," "warranted cowhide," and "leather," as applied to leather products, and with effect of inducing them to buy luggage thus stamped because of such erroneous belief, and with tendency and capacity to divert trade to it from competitors who sell such products covered with split hide and truthfully thus label the same, and from sellers of top grain leather covered luggage:

Held, That such acts and practices, under the conditions and circumstances described, were to the prejudice of the public and competitors and constituted unfair methods of competition.

Before *Mr. Joseph A. Simpson*, trial examiner.

Mr. William L. Pencke for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Meyer Brodie and Morris White, copartners, doing business under the firm name and style of M & M Bag and Suit Case Company, have been, and are now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That said respondents, Meyer Brodie and Morris White are copartners, doing business under the firm name and style

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of M & M Bag and Suit Case Company and have their office and principal place of business in the city of New York and State of New York.

PAR. 2. That said respondents are now, and for more than one year last past, have been engaged in the manufacture of leather luggage and in the sale and distribution of the same in commerce between and among various States of the United States; causing said products, when sold, to be shipped from their place of business in the State of New York to purchasers thereof located in a State or States of the United States other than the State of New York.

PAR. 3. That, during the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of luggage similar in kind to that made and sold by respondents, as hereinafter described, as well as other types of luggage, and such other individuals, firms, and corporations have caused and do now cause their said luggage, when sold by them, to be transported from the various States of the United States where they are located, to, into, and through States other than the State of origin of the shipment thereof. Said respondents have been, during the time aforesaid, in competition in interstate commerce in the sale of their said luggage with such other individuals, firms, and corporations.

PAR. 4. Certain pieces of the luggage manufactured and sold by respondents as aforesaid are made from top grain leather, while other pieces are made from split leather. Top grain leather is that portion of the hide which includes the outer surface or hair side and is of sufficient depth and thickness so that each square foot of said leather weighs not less than two ounces. Split leather consists of a cut or layer of the hide which remains after the top grain or surface has been removed from said hide. Split leather is of inferior quality and durability to top grain leather and commands a lower price. It is spongy, dry, and scuffs readily even when finished. The terms "top grain leather," "grained leather," "genuine leather," "genuine cowhide," "warranted leather," "warranted cowhide," "cowhide," and "leather," when applied to leather products, are understood by the trade and consuming public to mean top grain leather, as distinguished from split leather as described above, and there is a preference among the trade and consuming public for luggage made of such leather over luggage made from split leather. Certain pieces of the luggage manufactured and sold as aforesaid by respondents are covered with said split leather, and respondents place upon the surface of luggage so manufactured from said split leather, and have done

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so for more than one year last past, a conspicuous stamp reading as follows:

Warranted,
Top Grain Cowhide,
Leather,
or,
Warranted
Walrus Grained
Leather.

Respondents also stamp or represent or designate luggage manufactured by it from split leather as "leather" without indicating in any way that the said luggage is covered with split leather and not with top grain or genuine leather. Said stamps and representations imply to the purchasing public that the material with which such luggage is covered is top grain leather, and retailers are thus enabled by reason of said stamps, labels, or representations to mislead, deceive, and defraud the purchasing public as to the quality of the material with which such luggage is covered.

Said stamps represent and imply to the purchasing public that the material with which such luggage is covered is top grain leather, and retailers are enabled by reason of said stamps to mislead, deceive, and defraud the purchasing public as to the quality of the material with which such luggage is covered.

PAR. 5. That the representations of respondents, as aforesaid, have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public who believe that luggage so stamped by respondents is covered with the outside or top layer of the hide, and they are induced to buy luggage so stamped because of such erroneous belief. Such representations also have the tendency and capacity to divert trade to respondents from those competitors who sell luggage covered with split hide and truthfully so label them, as well as from those who sell luggage covered with top grain leather.

PAR. 6. The above alleged acts and things done by respondents are all to the prejudice of the public and of respondents' competitors in interstate commerce, within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission,

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to define its powers and duties, and for other purposes," the Federal Trade Commission, on December 12, 1935, issued and on December 14, 1935, served its complaint upon respondents, Meyer Brodie and Morris White, copartners, doing business under the firm name and style of M & M Bag and Suit Case Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondents filed no answer to the complaint. Testimony and evidence in support of the allegations of said complaint were introduced by William L. Pencke, attorney for the Commission, before Joseph A. Simpson, an examiner for the Commission theretofore duly designated by it; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and evidence, and brief in support of the complaint; brief of respondent and oral argument of both counsel having been waived; and the Commission having duly considered the same, and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Meyer Brodie and Morris White, are copartners and trade under the firm name and style of M & M Bag and Suit Case Co. Respondents are now, and for more than one year last past, have been engaged in the manufacture of leather luggage, consisting of suitcases, Gladstone bags, and zipper bags. Their factory and principal place of business is located in the city and State of New York, and they ship said goods, when sold, from said place of business to purchasers thereof located in a State or States of the United States other than the State of New York. Respondents are in competition with similar concerns, who sell and manufacture leather luggage, which, when sold, is shipped by said competitors into and through the various States of the United States and the District of Columbia, to purchasers thereof.

PAR. 2. Certain pieces of the luggage manufactured and sold by respondents as aforesaid are made from top grain leather, while other pieces are made from split leather. Top grain leather is that portion of the hide which includes the outer surface or hair side and is of sufficient depth and thickness so that each square foot of said leather weighs not less than two ounces. Split leather consists of a cut or layer of the hide which remains after the top grain or surface has been removed from said hide. Split leather is of inferior quality and durability to top grain leather and commands a lower price. It is spongy,

dry, and scuffs readily even when finished. The terms "top grain leather," "grained leather," "genuine leather," "genuine cowhide," "warranted leather," "warranted cowhide," "cowhide," and "leather," when applied to leather products, are understood by the trade and consuming public to mean top grain leather, as distinguished from split leather as described above, and there is a preference among the trade and consuming public for luggage made of such leather over luggage made from split leather. About 65 percent of the luggage manufactured and sold as aforesaid by respondents is covered with said split leather, and respondents placed upon the surface of luggage so manufactured from said split leather, a conspicuous stamp reading as follows:

Warranted
Walrus Grained
Leather

Respondents also stamped or represented or designated luggage manufactured by it from split leather as "leather" without indicating in any way that the said luggage was covered with split leather and not with top grain or genuine leather. Said stamps and representations implied to the purchasing public that the material with which such luggage was covered was top grain leather, and retailers were thus enabled by reason of said stamps, labels, or representations to mislead, deceive, and defraud the purchasing public as to the quality of the material with which such luggage is covered.

PAR. 3. The representations of respondents, as aforesaid, had a tendency and capacity to confuse, mislead, and deceive members of the public who believed that luggage so stamped by respondents was covered with the outside or top layer of the hide, and they were induced to buy luggage so stamped because of such erroneous belief. Such representations also had the tendency and capacity to divert trade to respondents from those competitors who sell luggage covered with split hide and truthfully so label them, as well as from those who sell luggage covered with top grain leather.

PAR. 4. The record that the practices complained of had been discontinued some months prior to the taking of testimony in this case, but there is no assurance in sight that respondents, if not prohibited, would not resume and continue their former acts and practices, as hereinabove set out.

CONCLUSION

The acts and practices of respondents under the conditions and circumstances described in the foregoing findings were to the prejudice of the public and respondents' competitors, and were unfair methods

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of competition in commerce and constitute violations of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and evidence taken before Joseph A. Simpson, an examiner of the Commission theretofore duly designated by it, in support of the charges of said complaint, and no evidence being offered in opposition thereto, and upon brief filed by William L. Pencke, counsel for the Commission, brief of respondent, and oral argument of both counsel having been waived, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondents, Meyer Brodie and Morris White, copartners, doing business under the firm name and style of M & M Bag and Suit Case Company, their agents, servants, and employees, in connection with offering for sale or sale of luggage by them in interstate commerce, do forthwith cease and desist from:

Labeling, stamping, or otherwise marking or advertising luggage manufactured in whole or in part from split leather as "Warranted Walrus Grained Leather" without at the same time and in connection therewith, clearly stating that split leather has been used in the manufacture of such luggage.

It is further ordered, That the said respondents, within 30 days from and after the date of the service upon them of this order, shall file with the Commission a report in writing, setting forth in detail the manner and form in which they are complying and have complied with the order to cease and desist hereinabove set forth.